THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

+ Writ Petition No.4900 & 9074 of 2007

% Dated 27.07.2007

Writ Petition No.4900 of 2007

Medidi Madhava Krishna Rao and another.

....Petitioners

$ Govt. of A.P. and others.

....Respondents

! Counsel for the petitioners : Sri C.Raghu
^ Counsel for respondents 1 to 3 : G.P. for Co-operation
^ Counsel for respondent 4 : Smt Bobba Vijaya Lakshmi

Writ Petition No.9074 of 2007

Moruboina Appa Rao and others.

....Petitioners

$ The District Collector and others.

....Respondents

! Counsel for the petitioners : Sri M.S.Rama Chander Rao
^ Counsel for respondents : G.P. for Co-operation

< GIST:

> HEAD NOTE:

? Cases referred:

HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION Nos. 4900 & 9074 of 2007

Dated 27.07.2007

W.P.No.4900 of 2007

Between:

Meddi Madhava Krishna Rao and another.

...Petitioners

and

The State of A.P. and others.

...Respondents

HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION Nos.4900 and 9074 of 2007

COMMON ORDER:

The subject matter of these two writ petitions is a show cause notice, dated 17.01.2007 issued by the Deputy Registrar of Co-operative Societies, Bhimavaram.

For the sake of convenience, the parties are referred to as arrayed in W.P.No.4900 of 2007.

The third respondent is a Primary Agricultural Co-operative Credit Society (for short 'the Society'). It had a managing committee, which was elected in 2005. The 4th respondent is the President and the petitioners in W.P.No.9074 of 2007 are the members of the committee. The District Collector, East Godavari (first respondent in W.P.No.9074 of 2007) constituted a special committee of certain officers of Co-operation Department, vide proceedings, dated 26.10.2006, to enquire into the affairs of the Society. The special committee submitted its report on 21.12.2006 to the District Collector. He passed on the same to the Joint Registrar/District Co-operative Officer with his own remarks. The latter, in turn, forwarded it to the Deputy Registrar of Co-operative Societies, Bhimavaram, second respondent, for necessary action. Acting on the same, the second respondent issued a show cause notice, dated 17.01.2007 under Section 34(1) of the Andhra Pradesh Co-operative Societies Act, 1964 (for short 'the Act'), directing the committee to show

cause as to why it shall not be superseded.

The President of the Society approached the Government, first respondent, by way of an appeal against the show cause notice. An order of stay was granted on 01.02.2007. The petitioners, who are the members of the Society, challenged the order of stay granted by the first respondent. The other members of the managing committee filed W.P.No.9074 of 2007, challenging the show cause notice, dated 17.01.2007.

Sri M.S.Rama Chander Rao, the learned counsel for the petitioners in W.P.No.9074 of 2007 and Smt Bobba Vijaya Lakshmi, the learned counsel for respondent No.4 in W.P.No.4900 of 2007 submit that the constitution of the special committee by the District Collector was totally outside the scope of the Act and the Rules; and neither the Society nor the persons, who were sought to be proceeded against, were issued any notice. They contend that an enquiry under Section 51 of the Act was already initiated and even while the same is pending, the second respondent had recorded specific findings, which are very serious in nature, contrary to the provisions of law. They submit that the show cause notice is without any basis and was issued by the second respondent, contrary to the provisions of law, and under the specific directions of his superiors.

The learned Government Pleader for Co-operation submits that W.P.No.9074 of 2007 filed against the show cause notice is not maintainable and it is for the aggrieved parties, to submit explanation and to pursue the remedies, if they feel aggrieved by any final order. He further contends that the petitioners in W.P.No.4900 of 2007 have, at the most, to approach the Government, ventilating the grievances, and the writ petition is not maintainable, against an order of interim stay granted by the Government.

Sri C.Raghu, the learned counsel for the petitioners submits that the appeal preferred by the 4th respondent against the show cause notice is not maintainable in law and he ought to have submitted an explanation to the show cause notice. He contends that the show cause notice does not suffer from any illegality or infirmity.

Section 34 of the Act empowers the Registrar to supersede an elected committee. Since the power is extraordinary in nature, strict compliance of it is to be ensured. Sub-Section (1) thereof is to the effect that in case, the Registrar forms an opinion that the committee is not functioning properly or is willfully disobeying or failing to comply with the lawful orders or directions, he can supersede the committee, after giving it an opportunity to explain. The opinion must be formed, on the basis of valid material. Further, the Registrar is required to keep the option open, till he considers the explanation. The final conclusions are to be arrived at, only after the explanation is examined.

In the instant case, the sole basis for the second respondent to issue show cause notice to the members of the Society under Section 34(1) of the Act is the report submitted by the special committee. Admittedly, the special committee was constituted by the District Collector, West Godavari. The District Collector is not at all assigned any role under the Act and the Rules, except that he happens to be the election authority under Rule 22. He does not figure anywhere under the scheme of the Act. The so-called special committee gathered material, without issuing notice to the members of the managing committee. The report was, straight away, submitted to the District Collector, who, in turn, forwarded it to the Joint Registrar/District Co-operative Officer, with his own remarks.

Even from a perusal of the impugned show cause notice, it is evident that the Joint Registrar communicated report of the special

committee to the second respondent with a direction to initiate necessary action. It is beneficial to extract the first two paragraphs of the show cause notice, which read as under:

> *Whereas serious allegations of corruption in disbursement of crop insurance compensation pertaining to Khariff 2005 is published in the media, the District Collector, West Godavari District, Eluru in reference 1st read above constituted a special committee to probe into the affairs of the Kalipatnam Primary Agricultural Cooperative Credit Society Ltd with particular reference to disbursement of crop insurance compensation, Khariff 2005. The Special Committee commenced the investigation on 31-10-2006 and submitted its report to the District Collector vide reference 2nd read above. The findings of the Special Committee in the report are approved by the District Collector, W.G.Dt, Eluru on 03.01.2007.*
>
> *In the reference 3rd read above, the Joint Registrar/District Coop. Officer, W.G.District, Eluru while communicating a copy of the report submitted by the Special Committee together with orders of approval of the District Collector, W.G.District, Eluru instructed the undersigned to initiate necessary action on the findings of the special committee.*

The show cause notice itself runs into 8 printed pages, extensively reproducing the findings recorded by the special committee. From the paragraphs extracted above, it is evident that the sole basis for the show cause notice was the report of the special committee and that it was issued under the instructions issued by the Joint Registrar to the second respondent. Therefore, there is a clear abdication of powers and surrender of discretion.

Even assuming that it is competent for the second respondent to issue a show cause notice, on the basis of the information received by him, it needs to be noted that he is under obligation to call for the explanation from the affected parties and defer the process of arriving at conclusions to a later stage. However, the second respondent has come to a firm conclusion, as to the acts and omissions on the part of the members of the managing committee. The same is evident from the following portion of the show cause notice:

The managing committee of the Kalipatnam Primary Agricultural Cooperative Credit Society Ltd, Kalipatnam failed miserably on all fronts. The Managing Committee to be acted against the interest of the society and its members and the cooperative movement. The Managing Committee violated the provisions of the Act and ceased to hold office under Section 32(1-A) of the APCS Act 1964. The leader of the managing committee cheated the society and resorted to criminal breach of trust punishable under the provisions of Indian Penal Code. The other Managing Committee members failed to arrest the illegal activities of the President both in drawal of loans and collection of illegal amounts from the payment of Insurance compensation amounts. On the whole the Managing Committee failed to function properly and acted against the interest of the society and the cooperative movement in particular.

The conclusions are so firm and final that the second respondent virtually left noting to be decided at a later point of time. The whole process of issuing show cause notice was reduced to an empty formality. By the time, the conclusions were arrived at, the members of the committee were not even supplied with the copy of the report. In the very next paragraph, the second respondent observed as under:

As the irregularities reported to have been committed by the managing committee of the Kalipatnam Primary Agricultural Cooperative Credit Society are found to be serious in nature, the Joint Registrar/District Cooperative Officer, W.G.Dt, Eluru in the reference 4th read above ordered statutory inquiry under Section 51 of the APCS Act 1964 into the affairs of the society and appointed Sri T.Veeranna, Asst.Registar/Superintendent, Office of the Divisional Cooperative Officer, Kovvuru to conduct the said inquiry and submit report.

When admittedly, an enquiry under Section 51 of the Act is pending, the conclusions arrived at and findings recorded by the second respondent would naturally shadow the outcome of the statutory enquiry.

It is no doubt true that the Courts would be slow to interfere with the show cause notice. However, when the show cause notice proceeds, on the basis of the material, which is not referable to any provisions of the Act, is issued under a specific direction by a superior authority, and

records definite and positive conclusions, it cannot be sustained in law.

For the foregoing reasons, W.P.No.9074 of 2007 is allowed and the impugned show cause notice is set aside. It is, however, made clear that in case, the enquiry under Section 51 of the Act, which is in progress, entails in any adverse findings against the committee, it shall be open to the second respondent to initiate necessary action, in accordance with law.

So far as W.P.No.4900 of 2007 is concerned, the appeal pending before the Government preferred by the 4th respondent shall abate and the writ petition becomes infructuous. There shall be no order as to costs.

_____

27.07.2007

Note: L.R.Copy to be marked.

(B/o)

JSU